Supreme Court, U.S.
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No. 85-829

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

GEORGE A. CREED & SON, INC. — **PETITIONER**

vs.

TRIDENT TECHNICAL COLLEGE AND LUCAS & STUBBS, LTD. — **RESPONDENTS**

BRIEF IN OPPOSITION OF RESPONDENT TRIDENT TECHNICAL COLLEGE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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TABLE OF CONTENTS

Page

STATEMENT OF CASE 1

ARGUMENT:

I. DID THE ARBITRATION PANEL REFUSE TO ALLOW WRITTEN BRIEFS ON RELEVANT ISSUES OR TO PERMIT ORAL ARGUMENT SO AS TO VIOLATE PETITIONER'S RIGHT TO DUE PROCESS? 1

II. DOES THE FEDERAL ARBITRATION ACT EXCLUDE THE PROVISIONS OF THE SOUTH CAROLINA ARBITRATION ACT WHERE THERE IS NO CONFLICT BETWEEN THE TWO STATUTES? 2

III. SHALL A LUMP SUM ARBITRATION ORDER BE VACATED WHEN IT ADMITTED THAT THERE IS NO EVIDENCE TO SUPPORT A MATERIAL PORTION OF THE AWARD? 2

CERTIFICATE OF SERVICE 4

TABLE OF AUTHORITIES

CASES: *Page*

Newark Stenotypers Union
v. Newark Morning Ledger,
261 F. Supp. 832
(D.C. N.J. 1966) 3

Reichman v. Creative Real
Estate Consultants, Inc.,
476 F. Supp. 1276
(S.D. N.Y. 1979) 1

FEDERAL STATUTES

9 U.S.C. §10 (a) (d) 1

TRANSCRIPT OF RECORD

Before South Carolina Supreme Court,
TR. Sup. Ct. p. 20 2
TR. Sup. Ct. p. 43 1
TR. Sup. Ct. p. 51 1
TR. Sup. Ct. p. 93 2

STATEMENT OF CASE

George A. Creed & Son, Inc., (Contractor), pursuant to a contract with Trident Technical College (Owner) to construct buildings for approximately $3,200,000 in Charleston, South Carolina, demanded and proceeded to arbitrate a dispute between the parties as a result of the contract's termination. Arbitration commenced on March 9, 1981, and continued over a course of eleven months. The transcript of the proceedings consisted of 41 volumes and hundreds of exhibits. The Arbitration Panel found for the Owner against the Contractor and the Architect who had been joined in the proceedings. Both parties moved before the State Circuit Court, the Owner to confirm and the Contractor to set aside the award.

The Circuit Court confirmed the arbitration award, finding that there was a lack of proof by the Contractor that he was denied due process in the disallowance of briefs and oral argument or otherwise.

The Order was appealed to the South Carolina Supreme Court which affirmed the findings of the Court below.

ARGUMENT

I. DID THE ARBITRATION PANEL REFUSE TO ALLOW WRITTEN BRIEFS ON RELEVANT ISSUES OR TO PERMIT ORAL ARGUMENT SO AS TO VIOLATE PETITIONER'S RIGHT TO DUE PROCESS?

The question as framed by the Contractor is the gist of his claim. The question, however, assumes a fact which both the Circuit and South Carolina Supreme Court determined had not been proven by the record. The Contractor conceded that the transcript of the arbitration did not support his claim (TR. before S.C. Sup. Ct. p. 51). Rather than offer the transcript for consideration of the Circuit Court, he attempted to make a record by an affidavit of the Contractor.

The Circuit Court found that the parties submitted detailed memoranda of their claims as well as additional briefs on various issues to the Arbitration Panel. The Contractor does not contend that he objected to the procedure on Memoranda and argument set by the Arbitration Panel. The court below held that the allegations by the Contractor that he was denied the opportunity to file briefs or that he was refused the right to make arguments was not supported by the record (TR. before Sup. Ct. p. 43). The Court further found, as did the Supreme Court, that assuming no oral argument was permitted there was no showing of any unfairness. *Reichman v. Creative Real Estate Consultants, Inc.*, 476 F. Supp. 1276 (S.D. N.Y. 1979). Clearly the Contractor failed to meet his burden of establishing misconduct which was so prejudicial as would justify setting aside the award (9 U.S.C. § 10 [a] [d]).

I. DOES THE FEDERAL ARBITRATION ACT EXCLUDE THE PROVISIONS OF THE SOUTH CAROLINA ARBITRATION ACT WHERE THERE IS NO CONFLICT BETWEEN THE TWO STATUTES?

It is interesting that the Contractor now claims that he is entitled to the benefit of the South Carolina Arbitration Statute. When the Owner originally contested the Contractor's right to arbitration, the Contractor argued successfully that the South Carolina Act had no application. The Circuit Court, in its order requiring arbitration, specifically held that the Federal Act was controlling, not only over the common law of South Carolina but the statutory law of the State in this case. (TR. Sup. Ct. p. 93) Clearly, the Contractor is bound by that Order.

III. SHALL A LUMP SUM ARBITRATION ORDER BE VACATED WHEN IT ADMITTED THAT THERE IS NO EVIDENCE TO SUPPORT A MATERIAL PORTION OF THE AWARD?

The Owner has not admitted on the record or at any time that there was insufficient evidence to support the award. Both the South Carolina Circuit Court and the South Carolina Supreme Court found the evidence sufficient, and Petitioner's statement of this question is incorrect and misleading. The Contractor claims that a material portion of the award was improper relying solely upon his interpretation of an explanation of the award, which accompanied the transmittal letter from the Arbitration Panel. The letter specifically stated that such explanation was unofficial and not a part of the award. (TR. Sup. Ct. p. 20.)

The lower court considered this very issue as did the South Carolina Supreme Court. Both courts held that there was no showing made by the Contractor sufficient to set aside the award. The Contractor now attempts to relitigate the very issues which were addressed by way of the arbitration proceedings, which were had at his insistence.

CONCLUSION

An arbitration award is presumptively correct. *Newark Stenotypers Union v. Newark Morning Ledger*, 261 F. Supp. 832 (D.C. N.J. 1966). No substantial Federal question is raised in the Petition even by argument, and certainly no question of general public interest meriting review by the United States Supreme Court. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Charleston, S.C.
December 12, 1985.

CERTIFICATE

In accordance with Rule 21 of the Rules of the Supreme Court of the United States, I hereby certify that I have this 12th day of December, 1985, mailed postage pre-paid the required copies of the Brief in Opposition to Petition for Certiorari to the Clerk's office of the Supreme Court of the United States for the purpose of filing on December 12, 1985, and have also mailed postage pre-paid the required copies of the above-mentioned documents to all attorneys of record as follows:

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SWORN to before me this
12th day of December 1985.

s/ Peggy P. Whitney (L.S.)
Notary Public for South Carolina